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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214508
Party	Defendant Selig Sealing Products, Inc.
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Date	08/10/2015
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Tekni-Plex, Inc.)	
)	
Opposer,)	Opposition No.: 91/214508 (parent)
v.)	Opposition No.: 91/215874
)	
Selig Sealing Products, Inc.)	
)	
Applicant.)	
)	
Serial No.: 86/001,725)	
Filed: July 3, 2013)	
Mark: EDGE PULL)	
)	
Serial No.: 86/001,764)	
Filed: July 3, 2013)	
Mark: EDGE PEEL)	
)	

RESPONSE TO OPPOSER’S MOTIONS FOR SUMMARY JUDGMENT

Selig Sealing Products, Inc. (“Selig”), the applicant in this proceeding, respectfully responds to the February 2, 2015 Motions for Summary Judgment of Tekni-Plex, Inc. (“Tekni-Plex”), the opposer. Briefing on the instant Motions was subject to suspension pending determination of the other motions. The briefing schedule recently resumed by the Board’s July 10, 2015 Order. While the Board notes that the two referenced proceedings were only just consolidated and permits separate briefing, Selig opts for one response to both Motions.

The opposer’s Motions for Summary Judgment were served and filed on the eve of trial, based on a wholly new allegation, that Selig lacked the requisite intent to use the EDGE PULL and EDGE PEEL marks at the time of filing its trademark applications. Notably, in making the Motions for Summary Judgment, the opposer submits no evidence to

support its original cause of action, that of – in sum – priority and likelihood of confusion. Instead of evidence in support of its cause of action, the opposer substitutes innuendo, as in its opening “Background” section with the assertion that Selig “apparently became aware of Tekni-Plex’s use of the EDGEPULL mark to offer a product that competed with Selig’s own adhesive seal product.” The opposer fails to submit any evidence to back up this assertion. The opposer goes on with an attempt to arouse suspicion about depositions of Selig witnesses that were never held – without also telling that the depositions remained unscheduled while parties discussed resolution. Furthermore, the record makes objectively plain that the discovery period closed without any motions alleging misbehavior in discovery. Selig respectfully requests that the Board find the opposer’s “Background” assertions without support.

Selig is a leading company in the sealing business, and the opposer describes Selig as its competitor. Selig attaches pages from its website, www.seligsealing.com, showing the history of Selig as well as its products and services as Exhibit 1. These pages display the variety of trademarked packaging seals readily available from Selig. Among such brands are Lift ‘n’ Peel, Aroma Peel, Safe-Gard, FoilSeal, DELTASEAL, Top Tab, Uni-Gard, Holo-Gard, Uni-Foam, ALPHASEAL, PolySan, and others. An inherent component to its sealing business is printing the surfaces of the seal, such as seen in promotional information and the gallery of seals from the www.seligsealing.com website, Exhibit 2. This gallery displays a myriad of customer trademarks and brands that Selig prints on seals as well as Selig’s own marked seals, all printed in the ordinary course of its business.

With this Response to the Motions for Summary Judgment, Selig contemporaneously serves and files its Amended Answers denying all new allegations

asserting lack of intent raised in the Proposed First Amended Notices of Opposition dated February 2, 2015. In sum of its Amended Answers, Selig denies that it lacked a *bone fide* intent to use the EDGEPULL and EDGEPEEL marks for specified “Primarily non-metal seals comprised of various layers including a metallic foil layer for use in container closures and caps” at the time of filing Application Nos. 86001725 and 86001764. Selig is and has been squarely and demonstrably in the business of making the specified seals as well as printing marks, designs, artwork and text on the seals such that producing branded seals, like EDGEPULL and EDGEPEEL, is already what Selig does.

TOTALITY OF THE CIRCUMSTANCES

As set forth in the Federal Circuit’s recent affirmation of the Board in *M.Z. Berger & Co. v. Swatch AG*, 114 USPQ2d 1892 (Fed. Cir. 2015), “[W]hether an applicant has a bona fide intent to use a mark in commerce is an objective inquiry based on the totality of the circumstances.” The Court refers to the provisions of 15 U.S.C. § 1051(b)(1) requiring that *bone fide* intent be measured “under circumstances showing the good faith of such person,” recognizing that the circumstances vary in each instance. The totality of circumstances does not require “an applicant to have actually promoted, developed, and marketed the mark at the time of the application.” *M.Z. Berger & Co.* [at 1899].

In that case where a watch manufacturer adopted a mark for timepiece goods, the totality of circumstances included the lack of documentary evidence, conflicting testimony as to intent at the time of filing, and a contemporaneous inability to produce a “smart watch” having technology features coupled with taking no steps to produce such a device, all of

which are circumstances markedly different from the evidence and allegations in this case. *M.Z. Berger & Co.* [at 1899].

In a case where “vehicles for transportation” were specified in the application, the totality of circumstances included a lack of documentary evidence, coupled with evidence of an actual business in car care packages rather than the vehicles themselves, again significantly different circumstances from the evidence and allegations here. *Honda Motor Co. v. Winkelmann*, 90 USPQ2d 1660, 1664 (TTAB 2009).

In a case where the applicant specified apparel, the totality of circumstances included a lack of documentary evidence, a lengthy list of specified apparel, and bare claims from the applicant on his marketing background and the availability of custom apparel shops, again significantly different circumstances. *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB 2008).

On the other hand, where the totality of circumstances included some documentary evidence, the quantum of intent to use can be met. *Lane Ltd. v. Jackson International Trading Co.*, 33 USPQ2d 1351 (TTAB 1994).

In the instant matter, Selig responded to Interrogatories and accurately stated that it has existing products available for the EDGEPULL and EDGEPEEL marks. “As stated, applicant has existing products which can be adopted to use this mark once it is cleared of objections.” [Response to Interrogatory No. 10]. “Without waiving its objections, Applicant states that it has for many years produced seals with a variety of trademarks and continues to develop and explore new products and marks.” [Response to Interrogatory 3]. These are among responses to opposer’s discovery requests, none of which have been contested or even questioned by the opposer.

Notably, nowhere in the Interrogatories does the opposer make actual inquiries into Selig's "intent to use" and, further, there was no cause of action attacking Selig's intent to use until the eve of trial. Furthermore, the discovery period closed without any motions alleging any deficiency in the responses or misbehavior in discovery in regard to Selig's responses to either Interrogatories or Document Requests. TMBP 523.04 ("If a party that served a request for discovery receives a response thereto which it believes to be inadequate, but fails to file a motion to challenge the sufficiency of the response, it may not thereafter be heard to complain about the sufficiency thereof.") The opposer, in abandoning its original cause of action and pursuing an eve-of-trial substitute, resorts to distorting the very wording of its Interrogatories to assert that the questions were directed to "intent to use" when, plainly, they were not.

Here, the opposer acknowledges Selig to be a competitor manufacturing the same type of goods. [First Amended Notice of Opposition, Paragraph 3 et seq.] Selig's website, as reasonable and reliable documentary evidence, fully backs up Selig's responses to the actual questions asked in the opposer's Interrogatories and sufficiently establishes *bone fide* intent to use. The website demonstrates Selig's substantial business and presence in the sealing business contemporaneous with the filing of the EDGEPULL and EDGEPEEL trademark applications. The website demonstrates that Selig offers printing services in the ordinary course of its business for embellishing its seals with trademarks, logos and artwork. Furthermore, the website gallery of specimens demonstrates that the printing of marks on the seals is often quite simply formatted, rather than an elaborate styling exercise. Fully entrenched in the field of making the specified goods, Selig's ultimate use of the subject marks merely takes printing the mark on seals or packaging. Where the circumstances

demonstrate the applicant's continuous activity and such a low barrier in using the new mark, documentation for implementing the subject marks is superfluous. Selig's immersion in the industry and ready capability to print marked seals provides sufficient evidence in the totality of circumstances to counter the opposer's eve-of-trial attack on Selig's intent to use the EDGEPULL and EDGEPEEL marks.

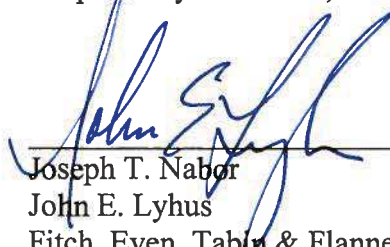
Based on the above circumstances, Selig's ready capability to use the subject marks significantly differs from precedent where lack of intent to use has been found. Beginning with *Honda Motor Co. v. Winkelman*, the applicant specified "vehicles for transportation" while the evidence showed the applicant as a producer of car care packages, well short of being a vehicle producer. Then to *Boston Red Sox Baseball LP v. Sherman*, the applicant specified a list of over 130 clothing items "ranging from anoraks to zori" [1587] with claims of relying on the availability of custom apparel shops to deliver branded product. And to *M.Z. Berger & Co. v. Swatch AG*, the applicant specified various categories and types of timepieces numbering to about 30 items with an idea limited to a "smart watch," but the evidence showed no steps to produce any watch with technological features. In addition, in *M.Z. Berger & Co.* conflicting testimony fully brought intent to use into question. In this instant matter, the opposer found itself on the eve of trial without garnering any such testimony.

In contrast to all of these cases, Selig is already fully established and focused on the business of producing the specified "Primarily non-metal seals comprised of various layers including a metallic foil layer for use in container closures and caps."

On the foregoing, Selig respectfully requests that the Motion for Summary Judgment be denied.

Respectfully submitted,

Date: August 10, 2015



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CERTIFICATE OF SERVICE

I, John E. Lyhus, Attorney for the Applicant, hereby certify that a copy of the foregoing RESPONSE TO OPPOSER'S MOTIONS FOR SUMMARY JUDGMENT was served by first class mail, postage prepaid, upon:

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Exhibit 1



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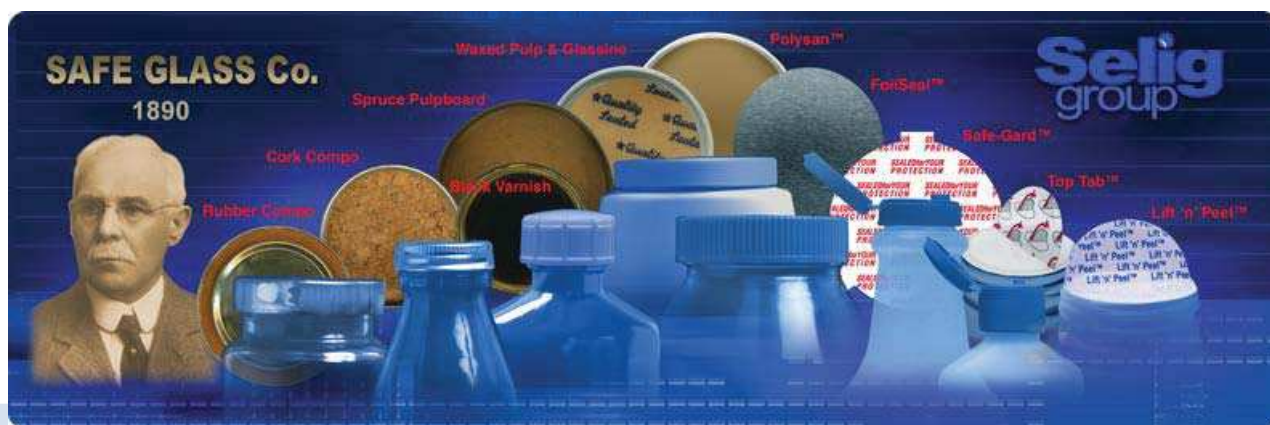
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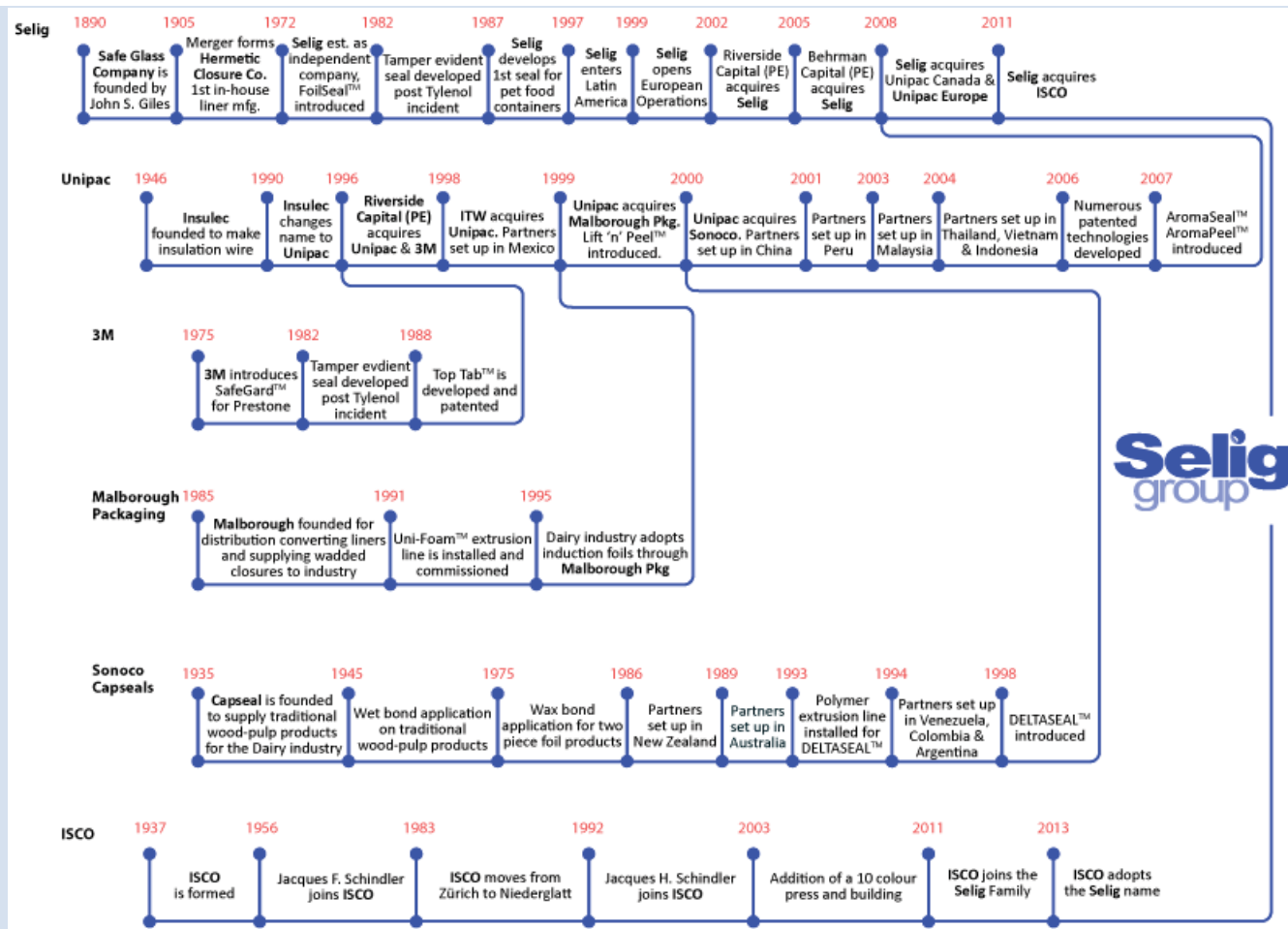
Our Mission

Selig Group is the largest manufacturer of tamper-evident cap/closure lining material in the world. But at the same time we are a small company and see ourselves as having a natural advantage to be more responsive and flexible than our competitors.

Selig's mission is to provide our customers with extremely high levels of responsiveness and flexibility in serving and determining their packaging needs—levels unmatched by anyone in our industry.

Sealing Solutions: 120 years ... and counting

Selig's strength and experience as a global leader of sealing solutions dates back to 1890 with the founding of the Safe Glass Company by John S. Giles. The 1905 merger with a closure company from San Francisco, California resulted in the name Hermetic Cap & Glass Company, the 1st known in-house liner manufacturing facility. With the acquisition of the Unipac Corporation in 2008 and ISCO in 2011, under one name, Selig Group brings you the core benefits, knowledge and rich history of the legends in global sealing solutions: Insulec, Unipac, 3M, Sonoco Capseals, Marlborough Packaging and Selig. [Behrman Capital](#) is the majority shareholder of Selig Group.



Selig Today

Featuring reliable, innovative, quality products that cover a broad range of applications such as: food, pharmaceutical, agricultural chemical, beverage and cosmetics, Selig's comprehensive range of both one piece (Uni-Gard™ and FoilSeal™), and two piece structures (Safe-Gard™ and FoilSeal™) give us the ability to meet the most demanding worldwide applications with one of our 600 customized aluminum foil / heat-seal combinations. In addition, our innovative products, such as Lift 'n' Peel™, Top Tab™, AromaSeal™ and AromaPeel™ offer a 'built in easy opening feature' that provides greater convenience to the consumer while providing differentiation to the brand owners.

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Induction Seal

Lift 'n' Peel™

Lift 'n' Peel™ easy open tab consists of a twin construction of polyester that has been designed to be ergonomically easy to grip, flexible and extremely strong. No additional processing or equipment is required to incorporate the Lift 'n' Peel™ liner, allowing closure manufacturers to improve yield whilst using standard punching equipment to insert it. Lift 'n' Peel™ is easy to use and remove. Engineered to maintain product integrity and ...



AromaPeel™

AromaPeel™ is an induction lining material consisting of decorated aluminum foil with an appropriate heat seal layer. The foil laminate is easily gripped by its unique semi-circular tab allowing for an easy open feature and creating differentiation. Available as a one piece, AromaPeel™ will deliver consistent and reliable induction sealing to an extensive range of plastic container materials as well as glass. AromaPeel™ will ensure that the ...



Safe-Gard™

Safe-Gard™ is the world leading two piece liner range of induction lining materials. Safe-Gard™ lining materials are easy to use and can be glued into the cap or simply inserted behind a retention feature with no need to make changes to existing cap designs. Safe-Gard™ liners form a strong seal, when after removal, leave an aluminum residue left on the container and a board re-seal in the cap. This provides a consistent tamper evidence fea ...



FoilSeal™

FoilSeal™ induction seals are an extensive range of one and two piece induction innerseals with various combination of foam, board, pulp, film, aluminum foil, and heat seal layers designed and engineered for over 70 years to create a perfect seal on almost any package. ...



DELTA SEAL™

The DELTA SEAL™ range of lining materials consist of an aluminum foil coated with a heat seal layer, polymer laminated to either a white lined folding box board or expanded polyethylene reseal backing material. The polymer lamination eliminates the use of wax, creating a stable liner over a wider temperature range. The lining material, when inserted into the closure, is applied to the container, and sealed by induction ...



Top Tab™

Top Tab™ induction foil is a two-piece induction liner with a built-in half-moon tab, manufactured from high quality raw materials under conditions which assure their safety for use in many packaging applications. A wax backing liner that separates during the induction process, ensures the pack can be released and still provide protection from leaking and will maintain its freshness ...



Uni-Gard™

Uni-Gard™ is a range of one piece induction seals that provide positive production benefits ranging from higher operating speeds and the flexibility to run wider operating parameters, to greater packaging confidence. Both peelable and welded products are available with customer specific prints for product differentiation and to add value to your packaging. * Available in tape and pre-cut liners ...



Holo-Gard™

Holo-Gard™ is a holographic induction seal that provides a fused, tamper evident seal to containers with the security features of a holographic foil laminate. ...



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Product Data Sheets | Traditional Reseal Liner

Product Data Sheets / Traditional Reseal Liner

Traditional Reseal Liner

Uni-Foam™

Uni-foam™ is a range of expanded polyethylene lining materials which provide a clean and excellent solution for general purpose closure lining or wadding for both plastic and ROPP metal closures. Expanded polyethylene (EPE) is a dust free, non absorbent sealing solution. Our material remains unaffected by ambient temperatures and resistant to mold growth. The smooth white surface adds value to the appearance of the packaging and a wide choice ...



ALPHASEAL™

ALPHASEAL™ is a range of traditional closure liner materials consisting of either unbleached, virgin wood pulp or folding box board. These materials are available with various facings to meet specific seal performance requirements. Available options for lamination to the pulp or box board are Aluminum foil, with or without a PET, PET, PVDC, or Saran. Each specific combination provides various levels of barrier to oxygen and moisture, and pro ...



PolySan™

PolySan™ is a broad use material that combines the high chemical resistance of PE with the gas blocking properties of PVDC. ...



Esterfoam™

Esterfoam™ is a primary base liner with a foam core with a PET film on both sides. This product can be used as a base liner for double lined, pull tab applications. ...



Esterfoil™

Esterfoil™ is a clear PET coated aluminum foil that can be printed for brand impact. It combines low transmission rates with high chemical resistance. ...



Lasan Polyester II™

Lasan Polyester II™ is a multi-purpose material that combines the properties of PET/PVDC and exceptional chemical resistance. It is also used as a base liner in our FoilSeal E™ series. ...



C25 Foam

C25 is a traditional reseal closure liner consisting of EPE foam. C25 Foam can be specified as an alternative to pulp backing. Optional on C25 Foam is either a PE or PET film facing. ...



Pulp

Pulp is a standard gasket liner. Available with or without surface wax. ...



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Induction Bond

DUOSEAL™ Core

DUOSEAL™ Core is a one piece double-sided ("duoseal") heat induction foil gasket-type material that provides a secure bond between two plastic components such as a dispensing closure and a container. When used to secure a dispensing closure to a container, it eliminates the need for threads, tamper bands or an expensive rotary capping process. Available with a board or foam core. ...



DUOSEAL™ Standard

DUOSEAL™ Standard is a one piece double-sided ("duoseal") heat induction foil material that provides a secure bond between two plastic components such as a closure and container. It can be used as a traditional container orifice seal, but with one side sealing the opening of a container and the opposite side of it bonded to a plastic "pull strip". ...



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Exhibit 2



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Product Innovations



[Download Selig's Guide to Printing and Branding Induction Seals Here](#)

Download Selig's Guide to Printed Induction Liners for more ideas and inspiration on how you can use printed induction seals.

When the consumer removes the closure, the innerseal becomes the focal point of the package - and an ideal platform for strategic communications. Printed graphics arise from many initiatives, a few of which are shown below.



When the consumer removes the closure, their attention is focused 100% on the induction seal liner. If you haven't taken advantage of the value provided by a printed induction seal, you might be missing an opportunity to engage your customer. The induction seal is the last piece of the package a consumer will remove before their first use, and first impression of your product. The options are endless when it comes to printed induction seals, but we have some great ideas on where to get started. Contact us today to learn more on growing your market share with branded seals.



[Induction Seal Selection Guide](#)



[Contact me to talk more about printing](#)



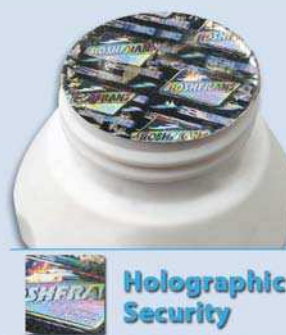
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Does Your Liner Have a Message?

The uses of a printed induction seal are endless. Available in single to multiple color prints, random or registered, we have the expertise to deliver a printed liner for both standard packages and special promotions. Explore the options of including a print or updating an existing print on your induction seal with some ideas below.



Additional Information Printed Liners



Take the Next Step with Selig Group's Printed Liners

Capable of full coverage prints, Selig Group can empower consumer belief and awareness with focused prints that feature: branding, safety messages, additional product or content information, coupons, complementary product promotion, and website information, including 2D barcode/QR codes for direct web links. For liners that exceed your expectations and prints that make an impact on your consumers, rely on the professionals at Selig Group, your global leader in innovative sealing solutions.

Interested in seeing some samples on your package? Contact one of our sales representatives today to get started with your print initiative!



Revised: October 27, 2014

www.SeligSealing.com

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Special Promotions

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2D Barcode Print



AromaPeel™ Induction Seal



Brand Loyalty Incentives



Coupon Print



Coupons



Custom Print FoilSeal™



Custom Print FoilSeal™



Game Piece Program



Induction Seal - Campi Mix



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Reseal



Castrol Oil with
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Foam FoilSeal™
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